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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,690	07/03/2003	Donald E. Weder	8403.865	6320
30589	7590	01/15/2004		
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			EXAMINER PALO, FRANCIS T	
			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/613,690

Applicant(s)

WEDER ET AL.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7/3/03.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors.

Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. The disclosure is objected to because of the following informalities:

Paragraph [0001] should be updated to reflect the patent status of application 10/170,611.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Miyake et al. (JP 404016132A) 1992.

Art Unit: 3644

Regarding claim-1:

Miyake depicts in Figure-2 a preformed shape-sustaining support member having open upper and lower ends and a peripheral sidewall having a plurality of apertures as cited in the instant claim.

While Miyake discloses a protective cover for growing plants; said cover is shaped and provided with apertures as cited in the instant independent claim, and therefore is capable of receiving a stem portion as cited in the instant claim.

Furthermore, "such that, upon positioning a sheet of fluid impermeable material about the preformed shape-sustaining support member", as cited in the instant claim, the cover of Miyake is capable of the conversion as cited in the instant claim.

Regarding claim-2:

The discussion above regarding claim-1 is relied upon.

Miyake discloses a copolymer construction in the Abstract.

4. Claims 3-8 are rejected under 35 U.S.C. 102(a) as being anticipated by Charrin (WO 96/37133) 1996.

Regarding independent claims 3 and 5:

The Examiner considers Weder 5,937,576 as the earliest effective filing date for the subject matter common with the instant application.

Art Unit: 3644

The apparatus cited in the preambles to the instant independent claims is evident from the Figures of Charrin; furthermore, a plurality of apertures (6) are evident from the Figures of Charrin, which are capable of the function of receiving stems as cited in the instant independent claims.

Figures 3 and 4 of Charrin depict the convertibility of the Charrin device as cited in the instant claims, and Charrin discloses in the Abstract the introduction and maintenance of water as cited in the instant claim.

Regarding claims 4 and 6:

The discussion above regarding claims 3 and 5 is relied upon.

Charrin discloses a watertight decorated sheet (8) and that the device is made of water and deformation resistant materials (read as; polymeric material) in the Abstract.

Regarding claims 7 and 8:

The discussions above regarding claims 5 and 6 are relied upon.

Charrin discloses in the Abstract, retention "by a ribbon", as cited in the instant claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3644

Leonard '666 teaches a shape sustaining support member provided with a plurality of apertures in the sidewall, which, upon positioning a sheet of fluid impermeable material about the member is capable of the conversion as cited in the instant invention.

Zumpel '520 teaches a shape sustaining support member capable of the instant invention, and further teaches the use of apertures in the sidewall as stem receivers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.

*Francis T. Palo*

Francis T. Palo  
Examiner  
Art Unit 3644

FP